

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

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|---|---|-----------------------|
| In re: |) | |
| |) | |
| RANDY P. COLEY, |) | |
| |) | Case No. 18-02154-JNC |
| |) | Chapter 7 |
| Debtor. |) | |
| |) | |
| | | |
| RICHARD D. SPARKMAN, Chapter 7 Trustee, |) | |
| |) | |
| Plaintiff, |) | Case No. 18-113-5-JNC |
| |) | |
| -against- |) | |
| |) | |
| ITS THUNDERTIME LLC, a Delaware Limited |) | |
| Liability Company; RANDY P. COLEY; |) | |
| KIMBERLI M. COLEY, |) | |
| |) | |
| Defendants. |) | |

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Through counsel, Richard D. Sparkman, Chapter 7 Trustee (“Trustee”) for the Bankruptcy Estate of Randy P. Coley, hereby seeks a Declaratory Judgment that the assets of Its Thundertime LLC, a Delaware Limited Liability Company (“ITT”), constitute property of the bankruptcy estate of Randy P. Coley (the “Debtor”) in the above-captioned Chapter 7 bankruptcy case. In support of his Amended Complaint, the Trustee avers as follows:

JURISDICTION

1. This Court has jurisdiction over the subject matter of this adversary proceeding pursuant to 28 U.S.C. § 1334(b).

2. Venue is proper pursuant to 28 U.S.C. § 1408.
3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

PARTIES

4. Richard D. Sparkman is the duly appointed Chapter 7 trustee for the bankruptcy estate of Randy P. Coley.
5. ITT is a Delaware Limited Liability Company that, prior to the Debtor's filing for bankruptcy, had its principal place of business in Wake County, North Carolina.
6. Randy P. Coley is the Debtor in the above-captioned proceeding. Upon information and belief, Mr. Coley is a resident and domiciliary of Wake County, North Carolina. Prior to filing for bankruptcy, Mr. Coley asserted an ownership interest in ITT.
7. Kimberli M. Coley is the Debtor's spouse. Upon information and belief, Mrs. Coley is a resident and domiciliary of Wake County, North Carolina. At various times prior to Mr. Coley filing for bankruptcy, Mrs. Coley asserted and denied having an ownership interest in ITT.

ALLEGATIONS IN SUPPORT OF DECLARATORY JUDGMENT

8. In January 2014, the United States District Court for the Western District of Virginia entered a judgment in favor of DIRECTV, LLC ("DIRECTV") against the Debtor and his company, East Coast Cablevision, LLC ("ECC").¹ The court initially awarded DIRECTV \$2,393,000.00. DIRECTV subsequently obtained an award of attorneys' fees and sanctions and, including post-judgment interest, DIRECTV's judgment against the Debtor exceeded \$2.6

¹ In November, 2011, East Coast Cablevision filed for Chapter 11 bankruptcy in this Court. In re *East Coast Cablevision, LLC*, 11-08976-8-RDD (Bankr. E.D.N.C.). In January 2012, the Honorable Randy Doub transferred venue of the bankruptcy to the United States Bankruptcy Court for the Western District of Virginia. 12-50041. A plan was neither proposed nor confirmed in that bankruptcy and the bankruptcy was dismissed on June 13, 2012.

million as of the Petition Date.

9. The Debtor and ECC did not appeal the orders of final judgment as to DIRECTV's substantive claims or the award of attorneys' fees or sanctions.

10. In post-judgment proceedings before the district court, DIRECTV sought to "reverse pierce" the corporate veil of and extend liability to several limited liability companies that the Debtor owned.

11. By Order dated July 18, 2016, the district court held certain entities affiliated with the Debtor to be alter egos of the Debtor including, without limitation, ITT.

12. Mr. Coley appealed the district court's rulings on the post-judgment proceedings. Two of Mr. Coley's LLCs, ITT and South Raleigh Air LLC, also appealed, along with Mr. Coley's wife, Kimberli M. Coley. The Fourth Circuit Court of Appeals dismissed South Raleigh Air LLC from the appeal prior to rendering a decision in the case.

13. On March 28, 2018, the Fourth Circuit Court of Appeals issued an opinion that affirmed the district court's decision to reverse pierce the corporate veil of ITT. The appellate court dismissed Mrs. Coley in conjunction with issuing its opinion on the merits.

14. On or about April 11, 2018, Mr. Coley and the other appellants filed a petition for rehearing en banc. On April 24, 2018, the Fourth Circuit Court of Appeals denied the petition for rehearing. The appellate court issued its mandate on July 16, 2018.

15. On April 30, 2018 (the "Petition Date"), the Debtor filed a voluntary petition seeking relief under chapter 11 of the Bankruptcy Code.

16. On July 16, 2018, the Court appointed Richard D. Sparkman as the Chapter 11 trustee for the Debtor's bankruptcy estate.

17. On August 16, 2018, the Court converted the matter to a Chapter 7 proceeding

and appointed Mr. Sparkman as Chapter 7 Trustee.

WHEREFORE, the Trustee respectfully prays for the following:

1. A declaratory judgment that the assets of Its Thundertime LLC, a Delaware Limited Liability Company, are included as property of the Debtor's estate pursuant to 11 U.S.C. § 541 and are subject to administration by the Trustee;
2. That the declaratory judgment be entered without prejudice to any party in interest seeking a determination concerning whether assets in other entities related to the Debtor should or should not be included as property of the Debtor's bankruptcy estate;
3. Preliminary and permanent injunctive relief to permit the Trustee to administer the assets of Its Thundertime LLC as part of the Debtor's bankruptcy estate.
4. For the costs of the action to be taxed in favor of the Trustee;
5. For such further relief as the Court determines is necessary and just.

This the 15th day of November, 2018.

/s/George F. Sanderson, III
George F. Sanderson, III
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*Counsel for the Trustee for Limited
Purposes*

CERTIFICATE OF SERVICE

I, George F. Sanderson III of ELLIS & WINTERS LLP hereby certify:

That I am, and all time hereinafter mentioned was, more than eighteen (18) years of age
and not a party to this action;

I hereby certify that on November 15, 2018, a true and correct copy of the forgoing
Amended Complaint was served by United States First Class Mail, postage prepaid, to the
following:

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J.M. Cook, P.A.
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Attorney for the Debtor

Its Thundertime LLC
c/o Kimberli M. Coley, Registered Agent
202 Brittany Place
Cary, NC 27511

Randy P. Coley
202 Brittany Place
Cary, NC 27511

Kimberli M. Coley
202 Brittany Place
Cary, NC 27511

This the 15th day of November, 2018.

/s/George F. Sanderson, III
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